

ROBERT G. LYNN (ON RECONSIDERATION)

IBLA 82-968

Decided June 7, 1983

Reconsideration of the Board's decision Robert G. Lynn, 70 IBLA 141 (1983).

Robert G. Lynn, 70 IBLA 141 (1983), vacated; decision of Bureau of Land Management set aside; case remanded.

1. Oil and Gas Leases: Applications: Generally -- Oil and Gas Leases: Filing -- Oil and Gas Leases: First-Qualified Applicant

Where an applicant fails to file five copies of a noncompetitive lease offer as required by the regulations in 43 CFR 3111.1-1(a), the lease offer is properly rejected. Failure to submit the required number of copies is not included in the list of curable defects in 43 CFR 3111.1-1(e) and, therefore, is fatal to the oil and gas offer.

2. Evidence: Credibility -- Oil and Gas Leases: Filing

Where an applicant submits evidence which supports a conclusion that all five copies of his noncompetitive lease offer were timely filed as required by the regulations in 43 CFR 3111.1-1(a), a decision rejecting that offer for failure to comply with the applicable regulation by filing only four copies of the lease offer will be set aside.

APPEARANCES: John F. Shepherd, Esq., Washington, D.C., for appellant.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

Robert G. Lynn has petitioned for reconsideration of the Board's decision styled Robert G. Lynn, 70 IBLA 141 (1983), in which we affirmed a decision by the California State Office, Bureau of Land Management (BLM), dated May 12, 1982, rejecting noncompetitive oil and gas lease offer CA 9927. BLM

based its decision on appellant's failure to comply with the requirements of 43 CFR 3111.1-1(a) by filing only four copies of the lease offer. In Robert G. Lynn, *supra* at 143, we stated, "An uncorroborated statement, as provided by Lynn, that the proper number of offers were filed is not sufficient to overcome the presumption that BLM properly discharged its duties and did not lose or misplace the document in issue. Metro Energy, Inc., 52 IBLA 369, 371 (1981)."

Appellant has asked us to reconsider our holding for the following reasons: (1) the Board mistakenly found that there was no corroborating evidence to rebut the legal presumption of regularity in favor of BLM; (2) in requiring corroborating evidence to rebut the presumption, the Board has misread the law of rebuttable presumptions; (3) the decision rejects Lynn's lease offer for a reason which appears to be "trivial and inconsequential" in light of applicable judicial precedents.

[1] As this Board correctly pointed out in Robert G. Lynn, *supra*, the governing regulation, 43 CFR 3111.1-1(a), provides that five copies of a noncompetitive lease offer must be filed in the proper office. The regulation at 43 CFR 3111.1-1(e), which specifically sets out all the curable defects for the filing of noncompetitive offers, does not include the failure to file the required number of copies as a curable defect. Thus, where the offeror fails to file the required number of copies, he is not a qualified offeror and the offer must be rejected. Robert G. Lynn, *supra* at 142; John P. Errebo, Jr., 32 IBLA 191 (1977).

[2] The real question which this case raises is whether or not all of the required copies were timely filed. BLM's case file contains only four copies of the offer, one less than the five copies the regulation requires. This Board has often noted the legal presumption of regularity which attends the official acts of public officers in the proper discharge of their official duties. L. E. Garrison, 52 IBLA 131 (1981), and cases cited therein. However, the presumption is rebuttable. Bernard J. Braker, 54 IBLA 332 (1981).

In Robert G. Lynn, *supra*, we held that Lynn's statement that he had filed the proper number of copies was not sufficient of itself to overcome the presumption of regularity. On reconsideration, however, appellant provides probative evidence sufficient to persuade this Board to vacate our previous decision and set aside the decision of BLM.

Previously, Lynn asserted that he filed six copies of CA 9927 and that the accounts clerk counted the copies and returned the sixth timestamped copy to Lynn. On reconsideration, Lynn called this Board's attention to BLM Manual § 1274, Release 1-954 (Mar. 3, 1975). Section 1274.12A states the following procedures for personal appearance window filings during public filing hours: "1. Stamp the exact date-time received. 2. Stamp only the original of the filing which becomes the case file copy. If all required copies are furnished plus an extra, the extra copy may be returned to applicant, receipt stamped * * *." (Emphasis added). Appellant attached a copy of the time-stamped copy returned to him. The case record contains an

undated, unsigned statement entitled Comments on the Appeal in which the State Office notes: "We agree that it is the intention of the accounting section personnel to count the copies of applications received over the counter. This, however, is done as a courtesy. It is not an official verifying system." (Emphasis in original.) The fact that the accounts clerk is instructed by the manual to return an extra copy receipt stamped only if all required copies are furnished, along with Lynn's submission of his extra copy which is receipt stamped, persuades this Board that a preponderance of the evidence before us supports a finding that all required copies were timely filed. See Bernard J. Braker, supra; L. E. Garrison, supra.

Our disposition of this case makes it unnecessary to reach the other issues raised by appellant.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the Board's decision in Robert G. Lynn, supra, is vacated and the decision of the BLM is set aside and the case files are remanded.

Bruce R. Harris
Administrative Judge

We concur:

Will A. Irwin
Administrative Judge

Anne Poindexter Lewis
Administrative Judge

